

LD 1038

An Act To License Home Building and Improvement Contractors

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-A, sub-§20-A is enacted to read:

20-A.

Maine Home Contractor
Licensing Board

Public Members Legislative Per Diem Other Members No
Compensation Authorized

32 MRSA
§15503

Sec. 2. 32 MRSA c. 137 is enacted to read:

CHAPTER 137

MAINE HOME CONTRACTOR LICENSING ACT

§ 17001. **Short title**

This chapter may be known and cited as "the Maine Home Contractor Licensing Act."

§ 17002. **Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Applicant.** "Applicant" means a person who applies for a license under this chapter.
- 2. Board.** "Board" means the Maine Home Contractor Licensing Board as set out in this chapter.
- 3. Chimney.** "Chimney" means a structure designed to lift fumes from the firebox up and out of a dwelling. "Chimney" includes the firebox, chimney back, cap, flue, post and pot.
- 4. Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.
- 5. Contract.** "Contract" means an agreement between an owner and a home contractor to build a dwelling or perform any home improvements on a dwelling.
- 6. Department.** "Department" means the Department of Professional and Financial Regulation.
- 7. Dwelling.** "Dwelling" means any building that is owner-occupied or constructed for sale to an owner-occupant and contains at least one and no more than 2 dwelling units.
- 8. Dwelling unit.** "Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- 9. Employee.** "Employee" has the same meaning as provided in Title 26, section 591, subsection 1.

10. Framing. "Framing" means the erection of the frame, flooring system, interior walls, backing, trusses, rafters, beams, stairs and soffits of a dwelling and all work related to the construction of the structure of the dwelling above the foundation.

11. Home contractor. "Home contractor" means a person who enters into a contract, offers to enter into a contract or submits a bid to enter into a contract with an owner to:

- A. Build a dwelling; or
- B. Perform any home improvement to a dwelling.

12. Home contractor services. "Home contractor services" means those services, including home improvement, performed by a home contractor licensed under this chapter.

13. Home improvement. "Home improvement" means:

- A. The construction, replacement, installation or improvement of additions of livable space, garages, carports, porches or decks, if they are used in conjunction with a dwelling; and
- B. Framing, roofing and the removal, repair, replacement or installation of siding, insulation, windows or chimneys.

"Home improvement" does not include redecorating or other cosmetic work.

14. Insulation. "Insulation" means any material high in resistance to heat transmission that, when placed in the walls, ceiling or floors of a structure, is used for the purpose of reducing the rate of heat flow.

15. Licensee. "Licensee" means a person who is issued a license to do business in this State under this chapter.

16. Owner. "Owner" means any owner, lessee or person who orders, contracts for or purchases home contractor services or person entitled to enforce the performance of the work of a home contractor.

17. Person. "Person" means any natural person, corporation, partnership or other business entity.

18. Roofing. "Roofing" means the installation of materials that form a weathertight surface on the roof of a dwelling, including but not limited to wood, cement, asbestos, clay tile and composition shingles, metal roofing, single-ply and built-up roofing materials and all associated flashings and gravel stops.

19. Siding. "Siding" means the finished exterior covering of the outside walls of a frame dwelling.

20. Window. "Window" includes a window sash, window frame and windowpane.

§ 17003. Board; organization

The Maine Home Contractor Licensing Board, as established in Title 5, section 12004-A, subsection 20-A, administers the provisions of this chapter to protect the public with respect to the practice of home contracting. All members must be appointed and the board shall first convene no later than September 1, 2008.

1. Board membership. The board consists of 9 members, appointed by the Governor, as follows:

- A. Two public members;
- B. Four home contractors having at least 5 years of experience as a home contractor, appointed by the Governor. After the expiration of the initial term of these members, the members must be licensed home contractors;
- C. One municipal code enforcement officer;
- D. One engineer or architect, licensed under this Title, with experience in the design or construction of dwellings, who serves as an ex officio nonvoting member; and
- E. One representative of the fire service in this State, who serves as an ex officio nonvoting member.

2. Terms; removal. The term of office of each member is 4 years, except as provided in this subsection, and members are eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term. Members may be removed by the Governor for cause. In order to provide staggered expiration dates of terms, the duration of initial terms is as follows:

- A. The fire service representative for 2 years;
- B. One public member for 3 years;
- C. One public member for 4 years;
- D. One home contractor for 2 years;
- E. One home contractor for 3 years;
- F. One home contractor for 4 years;
- G. One home contractor for 5 years;
- H. The municipal code enforcement officer for 4 years; and
- I. The engineer or architect for 2 years.

3. Meetings; quorum. The board shall meet at least once a year and at such other times as the board determines necessary. A majority of the members of the board constitutes a quorum for the transaction of business under this chapter.

4. Election of officers. The board shall annually elect a chair and other officers as the board determines necessary.

§ 17004. Rules

The board shall establish guidelines and rules by which this chapter is administered. Except as otherwise indicated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The board shall adopt rules:

1. License qualifications. Relating to the qualifications of an applicant for a license authorized under this chapter, as provided in section 17007, subsections 4 and 5;

2. Standards of practice. To establish standards of practice consistent with the standards set forth in this chapter and the Maine Model Residential Building Code adopted in this chapter governing the practice of home construction or home improvement;

3. Continuing education. Concerning requirements for continuing education to be completed by an applicant as a prerequisite to renewal of a home contractor's license; and

4. Renewal. Concerning license renewal. Licenses expire annually on December 31st or on a date the commissioner determines. The board shall issue a renewal license upon receipt of the written request for renewal, the annual fee and evidence of satisfactory completion of the

continuing education requirement pursuant to subsection 3. Licenses may be renewed up to 90 days after expiration upon payment of a late fee in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter.

§ 17005. **Fees**

The Director of the Office of Licensing and Registration within the department, pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that a fee may not exceed the following:

1. **General home contractor license.** For a general home contractor license under section 17007, \$350 annually;
2. **Specialty license.** For a specialty license under section 17007, \$150 annually; and
3. **Registration under section 17016.** For registration pursuant to section 17016, \$150 annually.

Fees may be used by the Director of the Office of Licensing and Registration only for the purposes of this chapter.

§ 17006. **Duties; powers**

The board has the following duties and powers in addition to those otherwise set forth in this chapter.

1. **Consent agreements.** The board may execute a consent agreement that resolves a complaint or investigation without further proceedings pursuant to Title 10, section 8003, subsection 5, paragraph B.
2. **Denial of license.** The board may not refuse to issue or renew a license for a reason other than the failure to pay a required fee unless the applicant has been afforded an opportunity for an adjudicatory hearing consistent with the board's rules.
3. **Hearings.** The board shall conduct hearings in accordance with Title 5, chapter 375, subchapter 4 to the extent applicable. The board, after hearing, may impose disciplinary sanctions pursuant to Title 10, section 8003, subsection 5, paragraph A-1. In addition, the board may revoke or suspend a license pursuant to Title 5, section 10004.
4. **Investigation.** The board may investigate or cause to be investigated any complaint made to the board and any case of noncompliance with or violation of this chapter.
5. **License qualification.** The board shall evaluate a person's qualifications for licensure under this chapter.

§ 17007. **Licensing; application**

1. License required. A person who acts as a home contractor must be licensed under this section. The board may grant the following licenses:

A. General home contractor licenses; and

B. Licenses specific to trades listed in section 17002, subsection 13, paragraph B.

2. Applications. Applications for licenses under this chapter must be submitted to the board on forms prescribed and furnished by the board and must contain the information and be accompanied by the attachments required by rule of the board, together with the prescribed fee.

3. Criminal history information. Pursuant to Title 5, chapter 341, an applicant under this section shall provide criminal history record information.

4. Requirements for licensure as general home contractor. A person is qualified for a general home contractor license if the person:

A. Has:

(1) Completed a combination of 4 years of relevant experience and education, as determined by the board, within one year after the date the licensing provisions under this chapter become effective pursuant to section 17016;

(2) Acknowledged, on a form provided by the board, an awareness of the board's adoption of a building code under section 17015;

(3) Demonstrated, in a manner determined by the board, a familiarity with Title 10, chapter 219-A; and

(4) Completed any other requirements the board determines are necessary for licensure; or

B. Has:

(1) Completed a combination of 2 years of relevant experience and education, as determined by the board, within one year after the date the licensing provisions of this chapter become effective pursuant to section 17016;

(2) Passed a general home contractor examination approved and adopted by the board that includes a test of proficiency in the building code under section 17015;

(3) Demonstrated, in a manner determined by the board, a familiarity with Title 10, chapter 219-A; and

(4) Completed any other requirements the board determines are necessary for licensure.

5. Requirements for licensure in specialty. A person is qualified for a specialty license, including a license to remove, repair, replace and install framing, roofing, siding, insulation, windows or chimneys, as appropriate, if the person:

A. Has:

(1) Completed a combination of 2 years of relevant experience and education in the specialty, as determined by the board, within one year after the date the licensing provisions of this chapter become effective pursuant to section 17016;

(2) Acknowledged, on a form provided by the board, an awareness of the State's adoption of a building code under section 17015;

(3) Demonstrated, in a manner determined by the board, a familiarity with Title 10, chapter 219-A; and

(4) Completed any other requirements the board determines are necessary for licensure; or

B. Has:

(1) Completed a combination of one year of relevant experience and education in the specialty, as determined by the board, within one year after the date the licensing provisions of this chapter become effective pursuant to section 17016;

(2) Passed an examination in the specialty approved and adopted by the board that includes a test of proficiency in those sections of the building code under section 17015 that relate to the specialty;

(3) Demonstrated, in a manner determined by the board, a familiarity with Title 10, chapter 219-A; and

(4) Completed any other requirements the board determines are necessary for licensure.

§ 17008. Exemptions to licensing

A license is not required under this chapter for a person who:

1. Home contractor. Acts as a home contractor but who does not receive \$3,000 or more from any one owner in a calendar year;

2. Labor; services. Performs labor or services for a home contractor licensed under this chapter;

3. Trade; profession. Holds a license for a trade or profession and is acting within the scope of the trade or profession for which the person is licensed;

4. Representative. Is an authorized representative of the United States Government, the State or any incorporated municipality, county or other political subdivision of this State who is acting within the scope of that representative's authorization;

5. Ownership interest. Performs work on a dwelling in which that person has an ownership interest or is a lessee performing work on the lessee's leased property;

6. Certified applied technology program. Is a student enrolled in a certified applied technology program in which the student works under the direct supervision of a home contractor licensed under this chapter;

7. Public utility. Is a public utility operating under the laws and rules of the Public Utilities Commission in construction, maintenance or development work incidental to the public utility's business; or

8. Manufactured housing. Is licensed by the Manufactured Housing Board and performs home construction services in connection with the construction or installation of manufactured housing.

§ 17009. **License limitation**

A license issued under this chapter may be issued to a person or a business entity. If the applicant is a corporation, partnership, limited liability company or other business entity, the entity must designate at least one qualifying natural person who is a partner, member, officer, manager or employee and who meets the professional qualifications required of licensees. In the event the designated natural person no longer holds the qualifying relationship with the entity due to death or separation, the entity must designate another natural person within 6 months from the date of death or separation and qualify that person as soon as is practical.

An entity may conduct business under a trade name if its license is issued under the trade name. The board may refuse to issue a license under a specific trade name if the name is considered to be misleading, deceptive or likely to result in confusion with other existing businesses.

§ 17010. **Changes in circumstances**

A licensee shall report a change of address or name or other material change in the condition or qualifications set forth in the original license application no later than 30 days after the change. Upon proper notice, the board's records must be changed and a new license issued for the unexpired term of the current license if appropriate.

§ 17011. **Denial of license**

The board may deny a license if an applicant:

1. Fails to submit completed application. Fails to submit a completed application within 30 days after being notified of the materials needed to complete the application;

2. Fails to satisfy qualifications or standards. Fails to meet license qualifications or to satisfy standards of practice as adopted by the board pursuant to section 17004, subsections 1 and 2;

3. Suspension or revocation of license. Has had a professional or occupational license suspended or revoked for disciplinary reasons or an application rejected for reasons relating to untrustworthiness within 3 years prior to the date of application; or

4. Conviction of crime. Is subject to disqualification based on the applicant's criminal history record information pursuant to Title 5, chapter 341.

§ 17012. **Financial disclosures**

An applicant for licensure under this chapter must file with the board the following information:

1. Nature of business. A complete statement of the general nature of the applicant's contracting business or the applicant's duties;

2. Unsatisfied judgments. Any final judgment owed to a consumer, based on a finding of fraud or breach of express or implied warranty of good workmanship, that remains unsatisfied 90 days after entry of judgment by a court of competent jurisdiction; and

3. Bankruptcy. Any pending petition in bankruptcy or discharge in bankruptcy within 7 years from the date of application.

§ 17013. **Penalties; injunction**

Violations of licensing requirements under this chapter are governed by the provisions of Title 10, section 8003-C.

§ 17014. **Grounds for disciplinary action**

After a hearing pursuant to section 17006, subsection 3, the board may refuse to issue or renew any license or impose disciplinary sanctions pursuant to Title 10, section 8003 if the licensee is found to have committed one or more of the following:

1. Criminal record. Subject to Title 5, chapter 341, any conviction of a crime described in Title 5, section 5301, subsection 2;

2. Fraud or incompetence. An act or conduct that constitutes fraud or incompetence in acting as a home contractor;

3. False statement. Procuring or attempting to procure a license under this chapter by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the board;

4. Aiding and abetting. Aiding and abetting a person in conduct that constitutes a violation of this chapter; and

5. Rule or law violation. Violating a rule adopted by the board or a provision of this chapter.

§ 17015. **Building code**

1. Code designated; amendments; final adoption. On January 1, 2008, the board shall begin considering amendments to the 2003 edition of the International Residential Code for adoption. On July 15, 2008, the board shall adopt the 2003 edition of the International Residential Code with all amendments the board has determined to be in the best interests of the State, which may be known thereafter as "the Maine Model Residential Building Code." Other codes and standards referenced within the 2003 edition of the International Residential Code may not be automatically adopted by the board by reference as part of the Maine Model Residential Building Code. The board may amend the Maine Model Residential Building Code

annually thereafter, including by incorporation of a later version of the International Residential Code upon finding that the amendments are in the best interests of the State.

2. Preemption. The energy efficiency standards adopted pursuant to Title 10, section 1415-C, the fire safety codes and standards adopted pursuant to Title 25, sections 2452 and 2465, the electrical code adopted pursuant to section 1153-A, the oil and solid fuel equipment standards adopted pursuant to section 2313, the plumbing code adopted pursuant to section 3403-B, the propane and natural gas equipment standards adopted pursuant to section 14805, the boiler and pressure vessel standards adopted pursuant to section 15104-A and the elevator standards adopted pursuant to section 15228 preempt the chapters of the Maine Model Residential Building Code that cover the same aspects of dwelling construction or improvement.

A residential building code adopted by a town, city or municipality prior to the date on which this chapter takes effect is not preempted by this section.

3. Limitation on code adoption. A town, city or municipality may not adopt a residential building code after the date on which this chapter becomes effective other than the Maine Model Residential Building Code or the 2003 edition of the International Residential Code plus any local amendments that a town, city or municipality has made to the code.

4. Notification of code adoption. A town, city or municipality shall notify the board, on a form provided by the board, of its adoption of the Maine Model Residential Building Code or the 2003 edition of the International Residential Code plus any local amendments that a town, city or municipality has made to the code within 30 days of its adoption.

§ 17016. Licensing effective; prior registration

1. Licensing effective. The provisions of this chapter requiring licensure become effective one year after the registration date, which is the first day of January of the year following the year in which:

A. The total number of the following towns, cities and municipalities that have adopted the 2003 edition of the International Residential Code or the Maine Model Residential Building Code reaches 56: Acton; Alfred; Arundel; Ashland; Auburn; Augusta; Bar Harbor; Bath; Belfast; Biddeford; Brewer; Bridgton; Brunswick; Buxton; Calais; Cape Elizabeth; Caribou; Carrabassett Valley; Cumberland; Dayton; Dedham; Durham; Eastport; Falmouth; Farmington; Fort Fairfield; Freeport; Gardiner; Gorham; Gray; Hallowell; Hampden; Herman; Holden; Hollis; Houlton; Kennebunk; Kennebunkport; Lebanon; Lewiston; Limington; Lisbon; Long Island; Lovell; Lyman; Manchester; Mechanic Falls; Newfield; Newport; North Yarmouth; Ogunquit; Old Orchard Beach; Old Town; Orono; Otisfield; Paris; Poland; Portland; Presque Isle; Rangeley; Raymond; Richmond; Rockland; Rumford; Saco; Sanford; Scarborough; Shapleigh; South Berwick; South Portland; Standish; Thomaston; Topsham; Trenton; Turner; Veazie; Waterboro; Waterville; Wells; Westbrook; Windham; Winslow; and Yarmouth; and

B. The total population, as determined by the 2000 Federal Decennial Census, of the towns, cities and municipalities listed in paragraph A that have adopted the 2003 edition of the International Residential Code or the Maine Model Residential Building Code is no less than 75% of the total population, as determined by the 2000 Federal Decennial Census, of the towns, cities and municipalities listed in paragraph A.

The legislative body of a town, city or municipality shall notify the commissioner when that town, city or municipality has adopted the 2003 edition of the International Residential Code or the Maine Model Residential Building Code. Once the total number of towns, cities and municipalities that have adopted the 2003 edition of the International Residential Code or the Maine Model Residential Building Code reaches 56, the commissioner shall immediately notify the Office of the Revisor of Statutes.

2. Fee. The fee for registration pursuant to this section is \$150 annually.

3. Prior registration. Upon the effective date of this chapter, the commissioner is authorized to develop a program of registration for persons who wish to practice as home contractors, in a manner that the commissioner shall determine. Beginning on the registration date as determined in accordance with subsection 1, the commissioner shall begin registering these persons and collecting a registration fee in accordance with section 17005. Beginning one year after the registration date, a person may not practice as a home contractor unless that person has applied to be registered pursuant to this chapter.

Violations of registration requirements under this section are governed by the provisions of Title 10, section 8003-C. This subsection is repealed upon the provisions of this chapter requiring licensure becoming effective pursuant to subsection 1.

SUMMARY

This bill creates the Maine Home Contractor Licensing Act. The bill contains the following provisions: requirements for licensure of general contractors and persons who perform framing, roofing, siding, insulating, window work or chimney work, if the work concerns residential dwellings; certain specific exemptions from licensure; required qualifications for general and specialty licenses; requirements for criminal and financial disclosures; creation and authority of the Maine Home Contractor Licensing Board; fees for licensing; adoption of a model building code; and a mechanism for phasing in a registration program, followed by a licensing program, upon adoption of the model building code by 56 of a list of 83 specified municipalities.